

No. \_\_\_\_\_ 05-592 NOV - 7 2005

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In The

**Supreme Court of the United States**

UNITED STATES ex rel. WERNER STEBNER,

*Petitioner,*

v.

STEWART & STEVENSON SERVICES, INC.  
AND McLAUGHLIN BODY CO.,

*Respondents.*

**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Fifth Circuit**

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED FOR REVIEW

1. Does the False Claims Act require an express certification of compliance with every provision of a federal contract before a contractor can be found liable for knowingly submitting claims for nonconforming goods to the federal government?
2. Does the fact that the Government was "involved" in the design of the product, had the right to inspect and test the product, and subsequently entered into modifications of the contract terms, relieve a contractor of liability under the False Claims Act for knowingly submitting non-conforming goods to the Government?
3. Does the use of an unpublished opinion by a Court of Appeals panel to announce a rule of law directly opposite to the same Court of Appeals' prior precedent violate Article III and the Due Process Clause of the United States Constitution?
4. Did the Court of Appeals deprive Petitioner of Due Process of Law and adversely affect the interests of the United States by basing its opinion on affidavits obtained in violation of the Department of Defense Touhy Regulations?
5. Does the False Claims Act require a subcontractor to submit false claims directly to the Government in order to be liable under the Act or is it sufficient for a finding of liability that the subcontractor knowingly submit false claims to the Government's prime contractor which then seeks reimbursement from the Government?
6. Is a separate Notice of Appeal a prerequisite to appellate review of the amount of costs taxed where a timely Notice of Appeal was filed seeking review of the final judgment, the district clerk's order taxing costs recites that the costs taxed "are included in the judgment," and the district court's order on review of the taxing of costs was entered after the Notice of Appeal had been filed?

## **PARTIES TO THE PROCEEDING**

The parties to the proceedings are:

*Petitioner:*

Werner Stebner

*Respondents:*

Stewart & Stevenson Services, Inc.  
McLaughlin Body Co.

*Party in Interest:*

United States of America

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*United States ex rel. Stewart & Stevenson Services, Inc.*, 144 Fed. Appx. 389 (5th Cir. August 8, 2005 (unpublished, No. 04-20209). Appendix A-1.

*United States ex rel. Stewart & Stevenson Services, Inc.*, 305 F. Supp. 2d 694 (S.D. Tex. 2004). Appendix A-11.

## BASIS FOR SUPREME COURT JURISDICTION

The Court of Appeals for the Fifth Circuit entered its judgment on August 8, 2005. Appendix A-1. Petitioner seeks review of that judgment on a writ of *certiorari*.

No petition for rehearing or rehearing *en banc* was filed. The present petition is timely filed under 28 U.S.C. § 2101(c) and under Rules 13.1 and 30 of this Court.

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review on a writ of *certiorari* the judgment of a federal court of appeals.

## CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Article III.

Constitution of the United States, Amendment V, Due Process Clause.

## STATUTES INVOLVED

### 31 U.S.C. § 3729. False Claims

(a) **Liability for certain acts.** – Any person who –

- (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United

- States a false or fraudulent claim for payment or approval;
- (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
- (3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;
- (4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
- (5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- (6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or
- (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,